

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MELANIE CHORAK,

Plaintiff,

vs.

JO ANNE B BARNHART, Commissioner of
Social Security Administration,

Defendant.

CASE NO. 06CV2060-IEG-NLS

ORDER:

**(1) DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT; (Doc. No. 13) and**

**(2) GRANTING DEFENDANT'S
CROSS-MOTION FOR
SUMMARY JUDGMENT. (Doc.
No. 19.)**

Plaintiff Melanie Chorak, proceeding by and through counsel, has filed this action pursuant to 42 U.S.C. § 405(g) for judicial review of the Commissioner's final decision denying her application for Social Security Disability Benefits under Title II of the Social Security Act. Plaintiff moves the Court for summary judgment reversing the Commissioner's decision and ordering an award of benefits. (Doc. No. 13.) The Commissioner has filed a cross-motion for summary judgment, asking the Court to affirm the denial of benefits. (Doc. No. 19.) These motions are appropriate for submission on the papers and without oral argument pursuant to Local Rule 7.1(d)(1). Upon review, for the reasons explained below, Plaintiff's motion for summary judgment is DENIED and the Commissioner's cross-motion is GRANTED.

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1 BACKGROUND

2 Procedural History

3 Plaintiff applied for Disability Insurance Benefits under Title II of the Social Security Act
 4 on January 25, 2005. (Administrative Record Transcript (“Tr.”) at 10.) The Social Security
 5 Administration denied plaintiff’s application initially and upon reconsideration. At plaintiff’s
 6 request, an Administrative Law Judge (“ALJ”) held a hearing on February 7, 2006. (*Id.* at 10.)
 7 On May 16, 2006, ALJ Eve B. Godfrey issued an unfavorable written decision finding plaintiff
 8 was not disabled. (*Id.* at 10-18.)

9 Plaintiff requested review by the Appeals Council of the ALJ’s decision. The Appeals
 10 Council denied Plaintiff’s request for review on July 26, 2006. (*Id.* at 3.) Plaintiff filed this action
 11 for judicial review on September 22, 2006.

12 Factual Background

13 Plaintiff is a 37-year-old woman with a college education and past relevant work as a
 14 receptionist, stock clerk and telephone operator. (Tr. at 11.) She alleges a disability due to major
 15 depression, Asperger’s syndrome, and a learning disorder. (*Id.*) Plaintiff has not engaged in any
 16 gainful activity since January 1, 2004, the alleged onset date of her disability. (*Id.*)

17 Plaintiff’s history of depression dates back to November 2003, when she began treatment
 18 at County Mental Health and attending counselling through her church. Her “Global Assessment
 19 of Functioning” (GAF)¹ at that time was about 60. In December of 2003, plaintiff reported
 20 increasing depression and inability to sleep. Her doctors prescribed the drug Effexor and plaintiff
 21 reported in February of 2004 she was sleeping better. In June of 2004, plaintiff reported feeling
 22 much better and much less anxious. In December of 2004, she reported increased depression. In
 23

24 ¹A higher GAF indicates the patient is better able to function while a lower GAF indicates more serious problems.
 25 As the Ninth Circuit explained:

26 Clinicians use a GAF to rate the psychological, social, and occupational functioning of a patient. The
 27 scale does not evaluate impairments caused by psychological or environmental factors. A GAF between
 28 41 and 50 indicates serious symptoms (e.g. suicidal ideation, severe obsessional rituals, frequent
 shoplifting) or any serious impairment in social, occupational, or school functioning (e.g., no friends,
 unable to keep a job).

Morgan v. Commissioner, 169 F.3d 595, 598 n.1 (9th Cir. 1999).

1 July of 2005, her anxiety was resolved and her GAF was assessed at about 50. Dr. Stephanie
 2 Buchert treated plaintiff on November 3, 2005. She assessed her GAF at that time as about 50.
 3 Dr. Buchert submitted a Mental Residual Functional Capacity Questionnaire dated January 24,
 4 2006 to the ALJ. Dr. Buchert reported plaintiff's limitations are moderate to severe and plaintiff is
 5 expected to be absent more than four days a month due to her condition.

6 Dr. Romualdo R. Rodriguez, M.D. evaluated plaintiff on August 27, 2005. Dr. Rodriguez
 7 diagnosed plaintiff with a dysthymic disorder and ADHD, inattentive type. He assessed her GAF
 8 at about 60. Dr. Rodriguez reported plaintiff is currently able to understand, remember and carry
 9 out simple instructions or detailed and complex instructions. Dr. Rodriguez identified slight
 10 limitations on plaintiff's ability to relate and interact in the workplace, moderate limitations on her
 11 ability to concentrate, and slight limitations on her abilities to complete daily activities, adapt to
 12 stress, and maintain regular attendance at work.

13 While plaintiff reported Asperger's syndrome and a learning disorder, she offered no
 14 evidence of a diagnosis of either condition.

15 DISCUSSION

16 Standard of Review

17 To qualify for disability benefits under the Social Security Act ("the Act"), an applicant
 18 must show that: (1) he or she suffers from a medically determinable impairment that can be
 19 expected to result in death or has lasted, or can be expected to last, for a continuous period of
 20 twelve months or more; and (2) the impairment renders the applicant incapable of performing the
 21 work that the applicant previously performed and incapable of performing any other substantially
 22 gainful employment that exists in the national economy. 42 U.S.C. § 423(d)(2)(A). An applicant
 23 must meet both requirements to be "disabled." Id.

24 The Social Security Regulations employ a five-step process to determine whether an
 25 applicant is physically disabled under the Act. If an applicant is found to be "disabled" or "not
 26 disabled" at any step, there is no need to proceed to subsequent steps. Tackett v. Apfel, 180 F.3d
 27 1094, 1098 (9th Cir. 1999) (citing 20 C.F.R. § 404.1520). Although the ALJ must assist the
 28 applicant in developing the record, the applicant bears the burden of proof as to the first four steps.

1 Id. If the fifth step is reached, the burden shifts to the Commissioner to rebut the finding of
 2 disability. Id. The five steps are as follows:

- 3 (1) Is the claimant presently working in any substantially gainful activity?
- 4 (2) Is the claimant's impairment severe?
- 5 (3) Does the impairment meet or equal one of a list of specific
 impairments?
- 6 (4) Is the claimant able to do any work that she has done in the past?
- 7 (5) Is the claimant able to do any other work that exists in significant
 numbers in the national economy?

9 20 C.F.R. § 416.920; see also Celya v. Halter, 332 F.3d 1177, 1180 (9th Cir. 2003) (describing the
 10 five step sequential evaluation process).

11 Section 405(g) of the Act allows unsuccessful applicants to seek judicial review of a final
 12 decision of the Commissioner. 42 U.S.C. § 405(g). This Court has jurisdiction to review the
 13 Commissioner's benefits decision and "shall have the power to enter, upon the pleadings and
 14 transcript of the record, a judgment affirming, modifying, or reversing the decision of the
 15 Commissioner, with or without remanding the case for a hearing." 42 U.S.C. § 405(g).

16 The Commissioner's denial of disability benefits will only be disturbed if the ALJ's
 17 findings are based on legal error or are not supported by substantial evidence. Mayes v.
 18 Massanari, 276 F.3d 453, 458-59 (9th Cir. 2001). "Substantial evidence" is "more than a mere
 19 scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might
 20 accept as adequate to support a conclusion." Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir.
 21 1997). In determining whether the ALJ's finding is supported by substantial evidence, the court
 22 must weigh both the evidence that supports and the evidence that detracts from the ALJ's
 23 conclusion as that evidence exists in the record. Id. "Where the evidence can rationally be
 24 interpreted in more than one way, the court must uphold the Commissioner's decision." Mayes,
 25 276 F.3d at 459 (citation omitted).

26 The ALJ's Decision

27 Here, the ALJ utilized the five-step eligibility test to analyze plaintiff's claim. With regard
 28 to step one, the ALJ noted that plaintiff has not engaged in substantial gainful employment since

1 her alleged disability onset date of January 1, 2004. (Tr. 17.) At step two, the ALJ found plaintiff
 2 has the severe impairments of a major depressive disorder and attention deficit disorder,
 3 inattentive type. (Id. at 13.) At step three, the ALJ found plaintiff's impairments did not
 4 individually or in combination equal any of the criteria contained in the Commissioner's Listing of
 5 Impairments, particularly Medical Listings 4.03, 12.04 ff and 10.05. (Id. at 14.) At step four, the
 6 ALJ found plaintiff could not perform her past relevant work. (Id. at 16.) Finally, at step five, the
 7 ALJ concluded plaintiff is capable of making a successful adjustment to work that exists in
 8 significant numbers in the national economy. (Id.)

9 The ALJ made the following specific findings:

- 10 1. The claimant meets the nondisability requirements for a period of disability and
 11 Disability Insurance benefits set forth in Section 216(i) of the Social Security Act
 and is insured for benefits through the date of this decision.
- 12 2. The claimant has not engaged in substantial gainful activity since her alleged onset
 of disability.
- 13 3. The claimant has impairments which are considered to be severe as defined in the
 14 Social Security Act and regulations. The evidence establishes the claimant has an
 15 affective disorder, viz., major depression and attention deficit hyperactivity
 16 disorder, inattentive type. The undersigned has found the claimant's hypertension
 17 which is under good control with medication and obesity, which the evidence
 reveals results in no further physical problems or functional limitations, are non
 severe. The evidence indicates the claimant's anxiety has resolved. There is no
 evidence to establish the claimant has a learning disorder, or Asperger's syndrome
 (20 CFR § 404.1520(c)).
- 18 4. These medically determinable impairments do not meet or medically equal one of
 19 the listed impairments in Appendix 1, Subpart P, Regulation No. 4.
- 20 5. The undersigned finds the claimant's allegations regarding her limitations are not
 21 totally credible for the reasons set forth in the body of the decision.
- 22 6. The claimant was born on October 11, 1968 and is currently thirty-seven years old.
 She completed high school and four years of college. The claimant possesses past
 23 relevant work as a receptionist, stock clerk and telephone operator.
- 24 7. The claimant's medical impairments result in mild restriction of activities of daily
 living; mild difficulties in maintaining social functioning; mild difficulties in
 25 maintaining concentration, persistence or pace with simple, repetitive tasks, but
 moderate difficulties with complex, detailed tasks; and no repeated episodes of
 26 decompensation or deterioration. The evidence does not establish the presence of
 the "C" criteria with regard to Medical Listing 12.04. The claimant's [sic] retains
 27 the mental residual functional capacity to perform at least simple, repetitive tasks,
 with limited contact with co-workers, supervisors and the general public.
- 28 8. The claimant is unable to perform any of her past relevant work and has no
 transferable skills. This was substantiated by expert vocational testimony (20 CFR

§ 404.1565).

9. Given the claimant's residual functioning capacity, as found by the undersigned, along with all relevant vocational factors, the undersigned has found there are a significant number of jobs existing in the national economy which the claimant can perform, on a sustained basis. Examples of these jobs are the unskilled, sedentary level work of an assembler, of which there are 1,500 jobs in the San Diego region and 159,000 nationally; the unskilled, light level work of a housecleaner, of which there are 4,5000 jobs in the San Diego region and 447,000 nationally; and the unskilled, light level work of an assembler, of which there are 7,200 jobs in the San Diego region and 729,000 nationally.
10. The claimant was not under a "disability," as defined in the Social Security Act, at any time through the date of this decision (20 CFR § 404.1520(g)).

(Tr. 16-17.)

Plaintiff's Allegation of Error

Plaintiff argues the ALJ failed to give clear and convincing reasons why she accepted the findings of the medical expert, Dr. Rodriguez, rather than plaintiff's treating physician, Dr. Buchert.² The ALJ advanced three reasons for rejecting Dr. Buchert's evaluation. First, the ALJ stated the record reflected Dr. Buchert only saw plaintiff once, in November of 2005. (Tr. 14.) Second, the ALJ noted Dr. Buchert's assessment was inconsistent with the progress notes and the other records from County Medical Health. (Id.) Finally, the ALJ concluded Dr. Buchert's evaluation was a response to plaintiff's subjective complaints, and the ALJ concluded plaintiff was not credible in reporting her depression. (Id.) Dr. Buchert's evaluation was contradicted by Dr. Rodriguez's assessment plaintiff was functioning at a GAF of about 60 and by the totality of plaintiff's medical history, in which she was more typically assessed at a GAF of about 60, rather than a 50.

A treating physician's medical opinion is entitled to controlling weight where that opinion "is supported by medically acceptable diagnostic techniques and is not inconsistent with other substantial evidence in the record." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001);

²While the memorandum in support of plaintiff's motion identifies the issues as "the ALJ erred in not finding that plaintiff's depression constituted a severe impairment" and "the ALJ should have used the testimony of a vocational expert in determining plaintiff's residual functional capacity," (Plaintiff's Memo. ISO Motion at 3), these appear to have been stated inadvertently because plaintiff's argument centers solely on the issue that "the ALJ erred in not giving controlling weight to the opinion of Dr. Buchert, the treating physician." (*Id.* at 8.) As the Commissioner notes, the ALJ did find plaintiff's depression was a severe impairment and did rely on a vocational expert. (Defendant's Memo. ISO Motion at 5.) Accordingly, the Court will only consider the issue of the ALJ's rejection of Dr. Buchert's opinion.

1 20 C.F.R. § 404.1527(d)(2). Where the opinion of the treating physician is inconsistent with other
 2 substantial evidence in the record, “[t]reating source medical opinions are still entitled to
 3 deference and must be weighed using all the factors provided in 20 C.F.R. [§] 404.1527.”
 4 Holohan, 246 F.3d at 1202 (quoting SSR 96-2p). “When confronted with conflicting medical
 5 opinions, an ALJ need not accept a treating physician’s opinion that is conclusory and brief and
 6 unsupported by clinical findings.” Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001).
 7 Where the treating doctor’s opinion is contradicted by the opinions of other examining doctors, the
 8 ALJ may reject the treating doctor’s opinion as long as he provides specific, legitimate reasons for
 9 doing so. Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). The opinion of an agency
 10 expert may constitute substantial evidence where it is consistent with other evidence in the record.

11 Id.

12 The Commissioner argues Dr. Buchert’s opinions are not entitled to the deference typically
 13 afforded a treating physician because Dr. Buchert only saw plaintiff on one occasion. The
 14 regulations of the Commissioner specifically indicate a treating physician’s opinion is entitled to
 15 deference based on the length of the treatment relationship and the doctor’s ability to provide a
 16 detailed and “longitudinal”picture of plaintiff’s medical condition. 20 C.F.R. § 404.1527(d).
 17 Accordingly, the Court agrees the limited nature of Dr. Buchert’s relationship with plaintiff and
 18 the contradiction of Dr. Buchert’s opinion by other substantial evidence in the record provided
 19 specific and legitimate reasons for rejecting her opinion. Plaintiff argues Dr. Buchert’s opinion
 20 should be entitled to controlling weight because Dr. Buchert relied on the ongoing treatment notes
 21 in plaintiff’s file in making her assessment. This argument is unavailing because that file is more
 22 consistent with Dr. Rodriguez’s evaluation than Dr. Buchert’s. Additionally, as the Commissioner
 23 notes, plaintiff has not challenged the ALJ’s determination plaintiff was not credible.
 24 Accordingly, the Court finds the ALJ’s reasons for rejecting Dr. Buchert’s opinions were specific
 25 and legitimate, and her decision was supported by substantial evidence in the record.

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1 CONCLUSION

2 For the reasons set forth herein, plaintiff's motion for summary judgment is DENIED and
3 the Commissioner's cross-motion for summary judgment is GRANTED. The decision of the
4 Commissioner is AFFIRMED, terminating this case.

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6 **IT IS SO ORDERED.**

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8 **DATED: May 7, 2008**

9 
10 IRMA E. GONZALEZ, Chief Judge
11 United States District Court

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